

By: Sanford

H.B. No. 2878

A BILL TO BE ENTITLED

AN ACT

relating to the right of conscientious refusal of a health care service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) This Act may be cited as the Texas Health Care Right of Conscience Act.

(b) The legislature finds and declares that people and organizations hold different beliefs about whether certain health care services and medical care are morally acceptable. It is the public policy of this state to:

(1) respect and protect the right of conscience of all persons who refuse to receive, obtain, or accept, or who are engaged in the delivery of, arrangement for, or payment of health care services and medical care whether acting individually, corporately, or in association with other persons;

(2) prohibit all forms of discrimination, disqualification, coercion, disability, or imposition of liability on those persons or entities for refusing to act contrary to their conscience or conscientious convictions in providing, paying for, or arranging for the payment of health care services and medical care; and

(3) ensure that patients receive timely access to information and medically appropriate care.

SECTION 2. Chapter 161, Health and Safety Code, is amended

1 by adding Subchapter Y to read as follows:

2 SUBCHAPTER Y. TEXAS HEALTH CARE RIGHT OF CONSCIENCE ACT

3 Sec. 161.751. DEFINITIONS. In this subchapter:

4 (1) "Conscience" means a sincerely held set of moral
5 convictions arising from:

6 (A) a belief in and relation to God; or

7 (B) a place in the life of its possessor parallel
8 to that filled by God among adherents to religious faiths.

9 (2) "Conscientious refusal of a health care service"
10 means a person's refusal to receive, obtain, perform, assist in
11 performing, give advice regarding, suggest, recommend, refer, or
12 participate in a health care service that is contrary to the
13 person's conscience.

14 (3) "Health care facility" means a public or private
15 organization, corporation, partnership, sole proprietorship,
16 association, agency, network, joint venture, or other entity that
17 provides health care services, including a hospital, clinic,
18 medical center, ambulatory surgical center, private physician's
19 office, pharmacy, nursing home, laboratory or diagnostic facility,
20 infirmary, dispensary, medical school, nursing school, or medical
21 training facility.

22 (4) "Health care provider" means a nurse, nurse aide,
23 medical assistant, hospital employee, clinic employee, nursing
24 home employee, pharmacist, pharmacy employee, researcher, medical
25 or nursing school student, professional, paraprofessional, or any
26 other individual who furnishes or assists in the furnishing of
27 health care services.

1 (5) "Health care service" means any phase of patient
2 medical care or treatment, including:

3 (A) testing, diagnosis, prognosis, ancillary
4 research, instruction, medication, and surgery;

5 (B) family planning, counseling, and referrals,
6 and any other advice in connection with the use or procurement of
7 contraceptives, sterilization, or abortion; and

8 (C) any other care or treatment rendered by a
9 health care facility, physician, or health care provider.

10 (6) "Physician" means a person licensed to practice
11 medicine in this state.

12 (7) "Undue delay" means an unreasonable delay that
13 impairs a patient's health.

14 Sec. 161.752. IMMUNITY OF PHYSICIANS AND HEALTH CARE
15 PROVIDERS. A physician or health care provider may not be held
16 civilly or criminally liable solely because of the physician's or
17 health care provider's conscientious refusal of a health care
18 service.

19 Sec. 161.753. DISCRIMINATION RELATED TO LICENSING. A
20 person violates this subchapter by discriminating against another
21 person because of the person's conscientious refusal of a health
22 care service, including discrimination with regard to:

23 (1) licensing;

24 (2) hiring, promoting, or transferring; and

25 (3) granting of staff appointments or other
26 privileges.

27 Sec. 161.754. DISCRIMINATION RELATED TO EMPLOYMENT. A

1 person, including a medical school or other institution that
2 conducts education or training programs for physicians or health
3 care providers, violates this subchapter by discriminating against
4 an applicant because of the applicant's conscientious refusal of a
5 health care service, including discrimination by:

6 (1) denying employment, admission, or participation
7 in a program for which an applicant is eligible;

8 (2) referring to conscientious refusal in an
9 application form;

10 (3) questioning an applicant regarding the applicant's
11 conscientious refusal of a health care service; and

12 (4) imposing a burden in the terms or conditions of
13 employment.

14 Sec. 161.755. DISCRIMINATION RELATED TO BENEFITS. A
15 person, including a public official, violates this subchapter by
16 discriminating against a recipient entitled to any type of aid,
17 assistance, or benefits because of the recipient's conscientious
18 refusal of a health care service, including discrimination by:

19 (1) denying aid, assistance, or benefits;

20 (2) conditioning receipt of the aid, assistance, or
21 benefits; or

22 (3) coercing or disqualifying the recipient.

23 Sec. 161.756. CONSCIENTIOUS REFUSAL PROTOCOL. (a) A health
24 care facility shall develop a written conscientious refusal
25 protocol describing a patient's access to care and information to
26 ensure that a conscientious refusal of a health care service does
27 not impair a patient's health. The protocol must explain the

1 process the health care facility will implement to address a
2 conscientious refusal of a health care service in a timely manner to
3 facilitate the patient's health care service. The protocol must, at
4 a minimum, require a health care facility, physician, or health
5 care provider to:

6 (1) timely inform a patient of the patient's
7 condition, prognosis, legal treatment options, and risks and
8 benefits of treatment options, consistent with accepted standards
9 of medical care; and

10 (2) provide copies of the patient's medical records to
11 the patient or to another health care facility, physician, or
12 health care provider designated by the patient in accordance with
13 medical privacy laws, without undue delay, if requested by the
14 patient or the patient's legal representative.

15 (b) This section does not require a health care facility,
16 physician, or health care provider to counsel a patient regarding a
17 health care service that is contrary to the conscience of the health
18 care facility, physician, or health care provider. The information
19 required by Subsection (a)(1) may be provided by a health care
20 facility, physician, or health care provider other than the health
21 care facility, physician, or health care provider with a
22 conscientious refusal of a health care service.

23 (c) A health care facility, physician, or health care
24 provider may not recover damages under Section 161.757 unless the
25 health care facility, physician, or health care provider, as
26 applicable, complies with the applicable health care facility's
27 conscientious refusal protocol developed under this section.

1 Sec. 161.757. VIOLATION. (a) A person who is injured by a
2 violation of this subchapter may bring a civil action against a
3 person who violates this subchapter.

4 (b) A person who brings an action under this section may
5 obtain:

6 (1) three times the person's actual damages, including
7 pain and suffering, or \$2,500, whichever is greater;

8 (2) court costs; and

9 (3) reasonable attorney's fees.

10 (c) The civil damages authorized by this section are in
11 addition to any other remedy available by law.

12 Sec. 161.758. SOVEREIGN AND GOVERNMENTAL IMMUNITY WAIVED.
13 Sovereign and governmental immunity to suit and from liability is
14 waived and abolished to the extent of liability created by Section
15 161.757. A person may sue a governmental entity for damages allowed
16 by that section.

17 Sec. 161.759. EFFECT OF PREVIOUS AGREEMENTS. This
18 subchapter may not be construed to exempt a person from liability
19 for refusal to allow or provide a particular health care service if:

20 (1) the person has entered into a contract
21 specifically to provide that health care service; or

22 (2) the person has accepted federal or state funds
23 solely and specifically conditioned on allowing or providing that
24 health care service.

25 SECTION 3. Not later than December 1, 2017, a health care
26 facility, as that term is defined by Section 161.751, Health and
27 Safety Code, as added by this Act, shall adopt a conscientious

1 refusal protocol required by Section 161.756, Health and Safety
2 Code, as added by this Act.

3 SECTION 4. (a) Section 161.752, Health and Safety Code, as
4 added by this Act, does not apply to a cause of action that accrued
5 before the effective date of this Act. A cause of action that
6 accrued before the effective date of this Act is governed by the law
7 applicable to the cause of action immediately before that date, and
8 that law is continued in effect for that purpose.

9 (b) Section 161.757, Health and Safety Code, as added by
10 this Act, applies only to a cause of action that accrues on or after
11 the effective date of this Act. A cause of action that accrues
12 before the effective date of this Act is governed by the law
13 applicable to the cause of action immediately before that date, and
14 that law is continued in effect for that purpose.

15 SECTION 5. This Act takes effect September 1, 2017.